



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

JUL 03 2000

SCHWEITZER CORNMAN GROSS
& BONDELL LLP
230 Park Avenue, Suite 2000
New York, New York 10169

In re Application of
SCHUMANN et al.
Application No.: 09/484,121
Filing Date: 04 April 1998
Attorney's Docket No.: 0107-020P/GPK
For: THERAPEUTIC AGENT FOR THE
TREATMENT OF SEPTICAEMIA, ITS
PREPARATION AND USE

: DECISION ON
: PETITION
: UNDER 37 CFR 1.137(b)
:
:
:
:
:

This is a decision on applicant's (renewed) "Petition to Revive Unintentionally Abandoned Application" under 37 CFR 1.137(b) filed 01 May 2000 to revive international application PCT/DE98/00964 for purposes of copendency with the present application.

BACKGROUND

On 04 April 1998, applicants filed international application PCT/DE98/00964, which designated the United States and claimed a priority date of 11 July 1997. A Demand for international preliminary examination was filed prior to expiration of 19 months from the priority date. Accordingly, the last day of the thirty-month period for paying the basic national fee for entry into the national stage in the United States was 11 January 2000. The case was ABANDONED on 12 January 2000.

On 13 January 2000, applicant filed, *inter alia*: a transmittal letter regarding a "New Patent Application"; an application containing a specification, including claims and drawings; and a petition to revive the international application as to the United States under 37 CFR 1.137(b) for purposes of copendency with the present application.

On 24 April 2000, the petition to revive under 37 CFR 1.137(b) was dismissed because applicant failed to provide the requisite petition fee under 37 CFR 1.17(m).

On 01 May 2000, the applicant filed the present renewed petition to revive under 37 CFR 1.137(b) and requisite petition fee.

DISCUSSION

International application PCT/DE98/00964 became abandoned as to the United States of America at midnight on 12 January 2000 for failure to pay the basic national fee.

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply unless it has been previously submitted, (2) the fee set forth in 37 CFR 1.17(m), (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional" and (4) a terminal disclaimer, in an application filed before 08 June 1995.

The filing of the present continuing application under 35 U.S.C. 111(a) is accepted as the appropriate response under 37 CFR 1.137(b) (See MPEP 711.03(c), page 700-88, left column, third full paragraph.) International application PCT/DE98/00964 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuing application number 09/365,492.

As to item (2), the required petition fee has been paid.

With regard to Item (3), applicant's statement in the 13 January 2000 "Petition to Revive Unintentionally Abandoned Application" that "[i]t is hereby requested that above-identified international application designating the United States, be revived, because it was unintentionally abandoned two days too soon" does not comply with 37 CFR 1.137(b)(3). However, the statement will be accepted and construed as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, Petitioner is required to provide a statement to that effect.

As to item (4), as the international application was filed after 08 June 1995, a terminal disclaimer is not required.

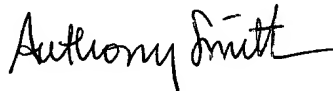
CONCLUSION

For the reasons discussed above, applicant's petition to revive international application PCT/DE98/00964 is GRANTED.

The application will then be forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a).



Leonard E. Smith
PCT Legal Examiner
PCT Legal Office



Anthony Smith
Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6461
Facsimile: (703) 308-6459